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No. 00-184

In the Supreme Court of the United States

ALTON RAY MILLS AND STEPHEN D. TOARMINA,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the evidence was sufficient to support petitioners' convictions for extortion that "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce," in violation of 18 U.S.C. 1951.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is reported at 204 F.3d 669. A previous opinion of the court of appeals affirming the dismissal of certain counts of the indictment is reported at 140 F.3d 630.

JURISDICTION

The judgment of the court of appeals was entered on February 28, 2000. A petition for rehearing was denied on May 4, 2000 (Pet. App. 22a-23a). The petition for a writ of certiorari was filed on August 2, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Tennessee, petitioners were convicted on one count of conspiracy, in violation of 18 U.S.C. 371 (Count 1); six counts of affecting commerce by extortion, in violation of the Hobbs Act, 18 U.S.C. 1951 (Counts 3, 5, 7, 9, 11, and 13); and four counts of money laundering, in violation of 18 U.S.C. 1956(a) (Counts 15-18). Petitioner Mills was also convicted on an additional extortion count (Count 14).[1] After the jury's verdict, the district court granted a judgment of acquittal. Pet. App. 11a-21a. The government appealed, and the court of appeals reversed. *Id.* at 1a-10a.[2]

1. Petitioner Alton Ray Mills was Chief Deputy Sheriff, and petitioner Stephen D. Toarmina was Staff Special Deputy, of the Shelby County Sheriff's Department in Memphis, Tennessee. Pet. App. 2a. Petitioners solicited and obtained payments of approximately $3500 from each of six people who sought employment as full-time deputy sheriffs with the Department. *Ibid.* Petitioner Toarmina encouraged the applicants, none of whom had the resources to pay the sums demanded, to

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[1] The indictment also included six counts of bribery, in violation of 18 U.S.C. 666, but the district court dismissed those counts before trial on the ground that the transactions at issue did not meet the $5000 statutory threshold. The government appealed, and the court of appeals affirmed the district court's dismissal of those counts. 140 F.3d 630 (1998).

[2] Petitioner Mills was sentenced only on Count 14, the one extortion count on which the district court denied a judgment of acquittal. The district court imposed a sentence of 37 months' imprisonment, to be followed by two years' supervised release. 11/19/98 Judgment 2-3. Petitioner Mills was also fined $7500. *Id.* at 5.

borrow the money from a Memphis loan company, First Metropolitan Financial Services, Inc., with which Toarmina had an ongoing relationship. *Id.* at 2a-3a. First Metropolitan's business involved loans made both to residents of Tennessee and to residents of other States. *Id.* at 3a; Gov't C.A. Br. 8.

Five of the six men accepted Toarmina's suggestion to apply for loans from First Metropolitan, and they listed Toarmina as a "source" or "reference" on their loan forms. Pet. App. 3a. First Metropolitan approved all of the loans, and Toarmina personally co-signed at least one of the notes. *Ibid.* The borrowers' loan payments included premiums for credit life insurance and disability insurance coverage provided by an insurance company located in Florida. Gov't C.A. Br. 8-9. The sixth applicant chose instead to raise the money for his extortionate payment with advances on his credit cards. Pet. App. 3a. All of the funds were paid to Toarmina, who deposited the money in the account of his grocery business. *Ibid.* Petitioners later used assets of that business for their personal financial obligations. *Ibid.*; Gov't C.A. Br. 10-11.

2. Petitioners were charged with violations of, *inter alia*, the Hobbs Act, which establishes criminal penalties for any person who "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do." 18 U.S.C. 1951(a). Petitioners moved for judgments of acquittal. Pet. App. 4a. The district court permitted the case to go to the jury but informed the parties that it intended to grant the motions if the jury returned guilty verdicts. *Ibid.* The jury found petitioners guilty on all counts. *Ibid.*

After the jury returned its verdict, the district court granted petitioners' motions for judgments of acquittal with respect to all but Count 14, the extortion count against petitioner Mills alone. Pet. App. 11a-21a. The court found that there was insufficient evidence of an effect on interstate commerce as a result of the extortion. *Id.* at 12a-17a. The court noted that the victims had used personal assets to pay the money demanded by petitioners, and that there was no proof that any victim was engaged in interstate commerce. *Id.* at 14a. The court rejected the government's contention that the Hobbs Act's interstate commerce element was satisfied by proof that petitioners had directed the applicants to First Metropolitan. *Ibid.*

The district court principally relied on *United States* v. *Mattson*, 671 F.2d 1020 (7th Cir. 1982), and *United States* v. *Buffey*, 899 F.2d 1402 (4th Cir. 1990), which the court described as holding "that the mere depletion of the personal assets of an individual does not create a reasonable probability of a de minimis effect on interstate commerce." Pet. App. 15a. The district court further held that other links to interstate commerce, including the deposits of the extorted sums into Toarmina's grocery business and the interstate purchases and travel of the sheriff's office, were too tenuously related to the extortionate conduct to constitute a sufficient commerce nexus. *Id.* at 15a-16a.

The federal money laundering statute prohibits specified financial transactions involving the proceeds of unlawful activity. See 18 U.S.C. 1956. Because petitioners' money laundering convictions were premised on the view that their extortionate conduct constituted the requisite "unlawful activity," the district court also granted the motions for judgments of acquittal on the money laundering counts. Pet. App. 18a. For similar

reasons, the court set aside petitioners' convictions on the conspiracy count. *Id.* at 19a-20a. The court left standing petitioner Mills's Hobbs Act conviction on Count 14. *Id.* at 20a-21a. The court explained that the victim of the extortionate act charged in that count had paid by means of a check drawn on the account of his auto recovery business, a company involved in interstate commerce. *Ibid.*

3. The government appealed from the judgments of acquittal, and the court of appeals reversed. Pet. App. 1a-10a. The court of appeals noted that the broad language of the Hobbs Act has been held to evince "a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence." *Id.* at 5a (quoting *Stirone* v. *United States*, 361 U.S. 212, 215 (1960)). The court further explained that the Hobbs Act has long been understood as requiring only a de minimis effect on commerce. *Id.* at 5a-6a. "Both in our circuit and others," the court stated, "this understanding has survived the opinion in" *United States* v. *Lopez*, 514 U.S. 549 (1995). Pet. App. 5a.

The court of appeals held that the record in this case established the requisite connection to interstate commerce. Pet. App. 6a-10a. It was sufficient, the court of appeals explained, that the evidence showed "a realistic probability that the bribe money would be borrowed from a company engaged in interstate commerce," especially in light of the "substantial evidence that [petitioner] Toarmina or one of his co-conspirators had actual knowledge of the interstate character of the funds before the money was turned over." *Id.* at 9a. The court of appeals distinguished the two cases on which the district court had relied. It explained that the courts of appeals in those cases had not considered

whether the sort of proof offered in this case—*i.e.*, evidence that an extortion victim had paid the perpetrator by securing a loan from a company doing business in interstate commerce—would establish the commerce nexus required by the Hobbs Act. *Id.* at 6a-10a.

Finally, the court of appeals held that the evidence supported petitioners' convictions even though "the [victims'] borrowing of the money from interstate lenders could not have been expected to 'interfere' with interstate commerce." Pet. App. 10a. The court explained that "the effect on commerce" required by the Hobbs Act "need not be adverse; even a beneficial effect can satisfy the statute." *Ibid.* The court of appeals observed that "[i]n exercising its constitutional power to regulate commerce among the several states, Congress often prohibits conduct that would have a stimulative effect on commerce as opposed to a depressive effect." *Ibid.*

ARGUMENT

1. Petitioners contend (Pet. 14-15) that their extortionate scheme did not have an effect on commerce within the scope of the Hobbs Act. The Hobbs Act makes it a federal crime to commit a robbery or extortion (or attempt or conspire to do so) that "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce." 18 U.S.C. 1951(a). That broad jurisdictional language demonstrates "a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence." *Stirone* v. *United States*, 361 U.S. 212, 215 (1960). As the court of appeals in this case correctly observed, the Hobbs Act has been uniformly

construed, both before and after this Court's decision in *United States* v. *Lopez*, 514 U.S. 549 (1995), as prohibiting all acts of robbery or extortion that in any way affect interstate commerce. See Pet. App. 5a-6a. As the Second Circuit explained:

> Our cases have long recognized that the jurisdictional requirement of the Hobbs Act may be satisfied by a showing of a very slight effect on interstate commerce. * * * We now expressly hold that *Lopez* did not raise the jurisdictional hurdle for bringing a Hobbs Act prosecution. * * * [O]ur sister Circuits that have addressed this question have all so held.

United States v. *Farrish*, 122 F.3d 146, 148 (1997) (brackets and internal quotation marks omitted), cert. denied, 522 U.S. 1118 (1998).

In keeping with that principle, the courts of appeals have consistently upheld Hobbs Act convictions even where, as here, the victim of the extortion was an individual rather than a business, so long as the evidence demonstrated an effect on interstate commerce. See *United States* v. *Kaplan*, 171 F.3d 1351, 1353-1356 (11th Cir.) (en banc), cert. denied, 120 S. Ct. 323 (1999); *United States* v. *Thomas*, 159 F.3d 296, 297-298 (7th Cir. 1998), cert. denied, 527 U.S. 1023 (1999); *United States* v. *Stephens*, 964 F.2d 424, 428-429 (5th Cir. 1992); *United States* v. *Biondo*, 483 F.2d 635, 639-640 (8th Cir. 1973), cert. denied, 415 U.S. 947 (1974); see also *United States* v. *Huynh*, 60 F.3d 1386, 1388-1389 (9th Cir. 1995); *United States* v. *Bengali*, 11 F.3d 1207, 1212 (4th Cir. 1993), cert. denied, 511 U.S. 1092 (1994); *United States* v. *Hollis*, 725 F.2d 377, 380 (6th Cir.), cert. denied, 469 U.S. 820 (1984). The decision below, affirming petitioners' Hobbs Act convictions for extortion of

individuals who obtained the funds from an interstate lender, is in accord with those decisions. As the court of appeals correctly held, the government in this case established the requisite effect on commerce through proof that petitioners' extortionate scheme required for its completion that the victims borrow the money from an interstate lending institution and that petitioners knew of "the interstate character of the funds before the money was turned over." Pet. App. 9a.[3]

2. Based on this Court's decision in *Lopez*, petitioners contend (Pet. 9-13) that a conviction under the Hobbs Act requires proof that a particular act of extortion has a "substantial" effect on interstate commerce. They assert that the courts of appeals are in conflict over the degree of impact on commerce that the

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[3] The court of appeals also correctly distinguished the cases on which the district court relied. Neither *United States* v. *Mattson*, 671 F.2d 1020 (7th Cir. 1982), nor *United States* v. *Buffey*, 899 F.2d 1402 (4th Cir. 1990), endorses a per se rule that extortion or robbery of an individual (as opposed to a commercial enterprise) falls outside the Hobbs Act's coverage. As the court below explained, those decisions rest on fact-specific determinations that the government in those cases had failed to establish any nexus between the extorted or stolen funds and any form of interstate commerce. Pet. App. 6a-10a. In neither of those cases did the court consider the question whether the Hobbs Act's interstate commerce requirement would be satisfied by proof that an extortion victim obtained the relevant funds from a commercial lender doing business in more than one State. See *ibid.* Here, by contrast, there was a "realistic probability" that the extorted funds would be borrowed from a company engaged in interstate commerce; indeed, the co-conspirators even directed the victims to a particular lending institution. *Id.* at 3a, 9a. In addition, petitioners deposited the proceeds of the extortionate scheme into the account of a commercial enterprise (the Toarmina Grocery and Market). See *id.* at 3a.

Act requires. That argument is flawed in at least two respects.

The Court in *Lopez* reaffirmed that "Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." 514 U.S. at 558. The government's evidence established that the victims in this case were encouraged to obtain loans from a business engaged in interstate commerce, that five of the six identified victims in fact obtained funds from that interstate company, and that the bribes were deposited into the account of a commercial business owned by petitioner Toarmina. Because the Hobbs Act as applied in this case served to regulate and protect "persons or things in interstate commerce," *ibid.*, no "substantiality" requirement applies. Cf. *United States* v. *Robertson*, 514 U.S. 669, 671-672 (1995) (per curiam) (upholding racketeering conviction based on evidence that enterprise gold mine was "engaged in" interstate commerce, and finding it unnecessary to consider whether activities of the gold mine "affected commerce," on the ground that "[t]he 'affecting commerce' test was developed * * * to define the extent of Congress' power over purely *intra*state commercial activities that nonetheless have substantial *inter*state effects.").

Even in cases where a "substantiality" requirement does govern the Commerce Clause analysis, the inquiry is not limited to the effects on commerce of a particular individual's conduct. Rather, the aggregate effects of the regulated activity may be considered in determining whether the statute falls within the reach of the commerce power. As the Court in *Lopez* reaffirmed, "where a general regulatory statute bears a substantial

relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence." 514 U.S. at 558 (emphasis omitted) (quoting *Maryland* v. *Wirtz*, 392 U.S. 183, 197 n.27 (1968)). The Hobbs Act's application to the extortions here is valid under that principle. Extortion involves a classic hallmark of economic activity—money changing hands outside a single household—and, in the aggregate, extortions that affect interstate commerce unquestionably have a "substantial" effect on interstate commerce. The convictions in this case may therefore be sustained under the third as well as under the second category of permissible Commerce Clause legislation described in *Lopez*. See *id.* at 558-560.

Petitioners' claim of a circuit conflict is incorrect. As noted above, the courts of appeals have agreed, both before and after *Lopez*, that the jurisdictional requirement of the Hobbs Act is satisfied with a showing of a very slight effect on commerce. See *United States* v. *Castleberry*, 116 F.3d 1384, 1387 (11th Cir.), cert. denied, 522 U.S. 934 (1997); *United States* v. *Harrington*, 108 F.3d 1460, 1467 (D.C. Cir. 1997); *United States* v. *Atcheson*, 94 F.3d 1237, 1241-1243 (9th Cir. 1996), cert. denied, 519 U.S. 1156 (1997); *United States* v. *Bolton*, 68 F.3d 396, 398-399 (10th Cir. 1995), cert. denied, 516 U.S. 1137 (1996); *United States* v. *Stillo*, 57 F.3d 553, 558 n.2 (7th Cir.), cert. denied, 516 U.S. 945 (1995). The cases on which petitioners rely (Pet. 9) are not to the contrary. In *United States* v. *Jennings*, 195 F.3d 795, 800 (1999), cert. denied, 120 S. Ct. 2694 (2000), the Fifth Circuit reaffirmed its prior holdings that the Hobbs Act may properly be applied to conduct having a *de minimis* effect on interstate commerce, so long as the defendant's "actions are of a type that, repeated many times over, would have a 'substantial effect' on

interstate commerce." In *United States* v. *Quigley*, 53 F.3d 909 (8th Cir. 1995), the court also did not hold that an individual Hobbs Act violation must be shown to have had a substantial effect on commerce. In that case the defendants robbed two individuals of "eighty cents and a near-empty pouch of chewing tobacco." *Id.* at 910. The court held that the robbery "had no effect or realistic potential effect on interstate commerce." *Id.* at 911. Although the court suggested that the Hobbs Act applies to crimes against individuals only in limited circumstances, see *id.* at 910-911, it did not announce a per se rule against such applications, nor did it consider particular links to commerce similar to those that are at issue in this case.[4]

3. Petitioners also contend (Pet. 6-9) that the Hobbs Act requires an "adverse" effect on commerce. The court of appeals correctly held that the Act contains no such requirement, and that holding does not warrant this Court's review, particularly since an adverse effect was shown on the facts of this case.

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[4] This Court recently denied petitions for certiorari in several cases in which the petitioners relied on *Lopez* in challenging the application of the Hobbs Act to robberies of commercial establishments, where the effect on interstate commerce in the individual case was said to be *de minimis*. See *Gasaway* v. *United States*, 120 S. Ct. 2194 (2000) (No. 99-464); *Chopane* v. *United States*, 120 S. Ct. 2195 (2000) (No. 99-5614); *Limbrick* v. *United States*, 120 S. Ct. 2195 (2000) (No. 99-6259); *McCray* v. *United States*, 120 S. Ct. 2195 (2000) (No. 99-6302); *Hickman* v. *United States*, 120 S. Ct. 2195 (2000) (No. 99-6378); *Smith* v. *United States*, 120 S. Ct. 2201 (2000) (No. 99-6323); *Nutall* v. *United States*, 120 S. Ct. 2201 (2000) (No. 99-6328); *Nutall* v. *United States*, 120 S. Ct. 2201 (2000) (No. 99-6329); *McClinton* v. *United States*, 120 S. Ct. 2201 (2000) (No. 99-6461); *Liddell* v. *United States*, 120 S. Ct. 2202 (2000) (No. 99-6762); *Gaines* v. *United States*, 120 S. Ct. 2202 (2000) (No. 99-6973); *Woodruff* v. *United States*, 120 S. Ct. 2202 (2000) (No. 99-8034).

The Hobbs Act criminalizes extortion that "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce." 18 U.S.C. 1951(a). Because the verb "affects" is modified only by the expansive phrase "in any way or degree," the text of the Act provides no support for petitioners' contention that the requisite impact on commerce must be "adverse." Although the verbs "obstructs" and "delays" imply a detrimental impact on commerce, the verb "affects" is not so limited.

Every court of appeals that has squarely considered the question has held that the Hobbs Act does not require an adverse effect on commerce. See *Kaplan*, 171 F.3d at 1356-1357; *United States* v. *Bailey*, 990 F.2d 119, 125 (4th Cir. 1993) ("A requirement that the effect on interstate commerce must be adverse is without support and is contrary to many cases that have found the jurisdictional requirement satisfied upon a threatened effect."); *United States* v. *Tormos-Vega*, 959 F.2d 1103, 1113 (1st Cir.) ("The commerce element may be satisfied * * * where the extortion has a beneficial effect on interstate commerce.") (internal quotation marks omitted), cert. denied, 506 U.S. 866 (1992); *Mattson*, 671 F.2d at 1024 ("Even a beneficial effect on interstate commerce * * * is within the prohibition of the statute.").

The cases on which petitioners rely (Pet. 6) do not conflict with the decisions cited above. Those cases contain dicta suggesting that the Hobbs Act contemplates a harmful effect on commerce. See *Jund* v. *Town of Hempstead*, 941 F.2d 1271, 1285 (2d Cir. 1991) (Hobbs Act prohibits "interference" with interstate commerce); *United States* v. *Collins*, 40 F.3d 95, 98 (5th Cir. 1994) (Hobbs Act requires proof that the robbery "obstructed interstate commerce"), cert. denied, 514 U.S. 1121

(1995); *United States* v. *Harmon*, 194 F.3d 890, 892-893 (8th Cir. 1999) (Act requires proof that an "extortionate transaction delayed, interrupted, or adversely affected interstate commerce"). None of those cases, however, directly presented the question whether a beneficial effect on commerce would satisfy the statute, and in none of those cases was the court's reference to adverse impacts central to its decision.[5] See *Kaplan*, 171 F.3d at 1357; cf. *Bailey*, 990 F.2d at 126 ("Although the word 'adverse' has been loosely used in expressing the effect on interstate commerce, such adverse effect is not an essential element of the crime that must be proved by

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[5] In *Jund*, the court began its analysis of the Hobbs Act by observing that the Act "has been interpreted to prohibit the illegal interference or attempted interference with interstate commerce in any way or degree, even if the effect is only minimal." 941 F.2d at 1285. The court concluded that the requisite impact on commerce had been proved, and it did not discuss the question whether a beneficial effect on commerce would suffice under the statute. *Ibid.* In *Collins*, the court held that the defendant's theft of the victim's personal vehicle, which prevented the victim from attending a business meeting and using his cellular phone to make business calls, had too attenuated an effect on interstate commerce to satisfy the statute. 40 F.3d at 99-101. Although the court referred to the allegation that the crime "obstructed interstate commerce" as "an essential element" of the Hobbs Act charge, the government did not purport to identify any beneficial effect on commerce resulting from the theft, and the court did not discuss the question whether such an effect could provide a basis for liability under the Act. *Ibid.* In *Harmon*, the court stated that "[t]o establish an offense under the Hobbs Act, the government must prove beyond a reasonable doubt that * * * the extortionate transaction delayed, interrupted, or adversely affected interstate commerce." 194 F.3d at 892-893. The defendants in that case did not contend, however, that the requisite link to commerce was lacking, and the court did not discuss the question whether a beneficial effect on commerce would suffice. See *id.* at 893-896.

the prosecution in a Hobbs Act case."). There is consequently no circuit conflict on this issue.[6]

In any event, as the government argued below, the record in this case would support a finding that the extortion caused an adverse impact on commerce. The evidence at trial showed that petitioners directed the victims of the extortionate scheme to apply for loans from First Metropolitan, a company engaged in interstate lending. As a result of those loans, First Metropolitan had fewer resources available for making loans to other applicants, including customers from other States. See Gov't C.A. Br. 21; Gov't Response to Petition for Rehearing En Banc 8-9.

4. Petitioners contend (Pet. 15-24) that the decision below conflicts with this Court's decisions in *Lopez*, *supra*; *United States* v. *Morrison*, 120 S. Ct. 1740 (2000); and *Jones* v. *United States*, 120 S. Ct. 1904 (2000). That claim is without merit.

a. The Court in *Lopez* held that Congress had exceeded its Commerce Clause authority by enacting a statute (18 U.S.C. 922(q)) that criminalized gun possession in the vicinity of schools without requiring proof that each instance of gun possession bore some connection to interstate commerce. The Court emphasized that Section 922(q) "by its terms ha[d] nothing to do with 'commerce'" and "contain[ed] no jurisdictional element which would ensure, through case-by-case inquiry, that the [criminal act] in question affect[ed] interstate commerce." 514 U.S. at 561. The Hobbs Act, by contrast, is directed at a form of economic activity—

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[6] We also note that the Court recently denied another petition for certiorari presenting this precise issue. *Kaplan* v. *United States*, 120 S. Ct. 323 (1999) (No. 99-75). There is no reason for a different result here.

extortion—and it contains an express jurisdictional element.

b. This Court's decision in *Morrison* also does not undermine the constitutionality of the Hobbs Act's application in this case. The Court in *Morrison* held that the private civil cause of action for gender-motivated violence created by the Violence Against Women Act, 42 U.S.C. 13981, could not be sustained under the Commerce Clause, reasoning that Congress lacks power to "regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce." 120 S. Ct. at 1754. *Morrison*'s reasoning is inapplicable here for at least three reasons.

First, unlike Section 13981, the Hobbs Act contains a jurisdictional element that requires a showing of an effect on interstate commerce in each case. Compare *Morrison*, 120 S. Ct. at 1751-1752 ("§ 13981 contains no jurisdictional element establishing that the federal cause of action is in pursuance of Congress' power to regulate interstate commerce," even though "*Lopez* makes clear that such a jurisdictional element would lend support to the argument that § 13981 is sufficiently tied to interstate commerce"), with *Jennings*, 195 F.3d at 800 (consistent with the jurisdictional element of Section 1951(a) ("Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce"), the government must show "a slight effect [on interstate commerce] in each case"). Second, while Section 13981 addressed noneconomic violent conduct, the robbery or extortion prohibited by Section 1951(a) covers economic activity, which Congress may reach even if the transaction is illegal. See *Morrison*, 120 S. Ct. at 1750 (citing *Lopez*, 514 U.S. at 559-560, which found the loansharking statute upheld in *Perez* v. *United States*, 402

U.S. 146 (1971), to be an example of regulation of "economic activity"). Third, the criminal activity in this case directly affected two different commercial enterprises, since five of the six victims obtained the relevant funds from a lender doing business in interstate commerce, and the proceeds of the crime were deposited into the account of the grocery owned by petitioner Toarmina.

c. Finally, the Court's decision in *Jones*, *supra*, is not apposite here. The Court in *Jones* held that the federal arson statute, 18 U.S.C. 844(i) (1994 & Supp. IV 1998), does not apply to the destruction of an owner-occupied residence that was not used for any commercial purpose. In construing Section 844(i), the Court in *Jones* emphasized aspects of that statute's language—in particular, the requirement that the victimized property be "used" in an "activity" affecting interstate commerce, see 120 S. Ct. at 1910-1911—that have no counterpart in the language of the Hobbs Act. This Court has already construed the Hobbs Act to reach to the limits of the commerce power. See *Stirone*, 361 U.S. at 215. Moreover, here (unlike in *Jones*), an effect on interstate businesses was not simply a fortuitous result of petitioners' conduct; it was an integral feature of their extortionate scheme.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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